

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FILED  
POLK COUNTY, IA.

2005 OCT 18 PM 1:25

CLERK DISTRICT COURT

HARVEY L. KUNZMAN JR.,  
Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS  
BOARD,  
Respondent.

No. CV5682  
RULING

STATEMENT OF THE CASE

This is a judicial review of administrative agency action of the Public Employment Relations Board pursuant to Iowa Code section 17A.19. The matter was heard on October 13, 2005 and was contested but not reported. The Court is reviewing PERB's May 23, 2005 decision in a prohibited practice proceeding between Mr. Kunzman and Teamsters Local Union No. 828.

Kunzman alleged the Local's commission refused to pursue his grievance against his former employer to arbitration. After an evidentiary hearing and briefing the administrative law judge issued a proposed decision and order which dismissed the complaint. Kunzman appealed the proposed decision.

PERB Chair James R. Riordan and Member M. Sue Warner heard the appeal. Board Member Neil Barrick recused himself and did not participate in the proceedings. The Board quorum concluded that Kunzman had failed to establish Local 828's commission of a prohibited practice and dismissed his complaint.

Kunzman later claimed that Mr. Barrick "was conflicted" but nonetheless "was on the panel that considered Mr. Kunzman's appeal" and "heard the evidence [and] participated in the appeal, at least to some extent." Kunzman demanded that the PERB decision be vacated.

The PERB Chair responded to Mr. Kunzman that the PERB decision would not be vacated and explained that had not been on the panel that considered Kunzman's appeal, had not heard the evidence, and had not participated in the PERB decision.

Kunzman then commenced this proceeding for judicial review.

#### STATEMENT OF THE FACTS

Kunzman was a member of a bargaining unit of employees of the Mason City Community School District represented by Local 828. The District terminated his employment and he filed a grievance challenging the discharge under the grievance procedure established by the collective bargaining agreement between Local 828 and the District.

After the grievance was denied by the District the Local elected not to arbitrate the grievance. The agency action concerned whether that refusal was arbitrary, discriminatory or in bad faith, and breached Local 828's Iowa Code section 20.17(1) duty of fair representation.

#### RULING

The District Court acts in an appellate capacity to correct the agency's errors of law. *Holland Brothers Construction v. Iowa State Board of Tax Review*, 611 N.W.2d 495, 499 (Iowa 2000). Review is not de novo. *Mortimer v. Freuhauf Corp.*, 502 N.W.2d 12, 14 (Iowa 1993). To prevail an appeal a party must demonstrate prejudice to substantial rights arising from agency action which falls within one of the grounds designated in Iowa Code section 17A.19. *Mercy Health Center v. State Health Facilities Council*, 360 N.W.2d 808, 811 (Iowa 1985).

Here, Mr. Kunzman has the burden of demonstrating the invalidity of the agency's action. Iowa Code § 17A.19 (8) (a).

The thrust of Mr. Kunzman's claims address Iowa Code sections 17A.19 (10) (e) and (f).

## I.

An agency's findings of fact are binding on appeal unless they are not supported by substantial evidence. *Norland v. Iowa Dept. of Job Service*, 412 N.W.2d 904, 908 (Iowa 1987). Mr. Kunzman does not identify specific factual findings by PERB which are unsupported by substantial evidence, but requests the Court to review the record de novo. As noted, the review in this matter is at law.

The issue here is whether the record supports the findings actually made. *See, e.g., Pointer v. Iowa Dept. of Transportation*, 546 N.W.2d 623, 625 (Iowa 1996). It does not matter if this Court could reach a different interpretation of the facts. Evidence is not insubstantial merely because it could support alternative inferences. Nor is it insubstantial because it might lead to two inconsistent conclusions. *City of Hampton v. Iowa Civil Rights Commission*, 554 N.W.2d 532, 536 (Iowa 1996).

The Court, in a judicial review, has no original authority to declare the rights of the parties to agency proceedings. *Office of Consumer Advocate v. Iowa State Commerce Commission*, 432 N.W.2d 154, 156 (Iowa 1988).

PERB was not required to address any remedy-related issues because Mr. Kunzman did not establish the commission of a prohibited practice.

As the Iowa Supreme Court has noted:

Court interference with agency action is warranted only under the limited grounds specified in Iowa Code section 17A.19 (8) [now 17A.19 (10)]. . . . Because these statutory grounds mark the parameters of a reviewing court's authority to interfere with agency action, challenges on judicial review are necessarily couched in the words of section 17A.19 (8) [17A.19 (10)]. A survey of our many cases will however disclose that the contentions do not usually amount to a statutory ground. An assertion of a statutory violation is nearly always a disagreement on the merits.

Administrative tribunals were established in order to transfer from the courts to an agency the authority to resolve disputes in an area where the agency is presumed to have expertise superior to the court's. The "hands off" policy of the courts in reviewing agency determinations recognizes that judicial second-guessing of agency wisdom would destroy the fabric of administrative law and render its operation largely

meaningless and therefore an extravagant waste of both public and private funds.

These elementary fundamentals should be borne in mind in cases . . . where feelings on the merits of administrative controversies are so strong that they tend to blur the line between the merits of a dispute and the legality of an agency decision resolving them.

*Leonard v. Iowa State Board of Education*, 471 N.W.2d 815, 816 (Iowa 1991).

In the present case Mr. Kunzman is, in essence, requesting the Court to review the same record as the agency reviewed but interpret the evidence differently. The thrust of his argument is that Mr. Wheeler neither liked nor respected him and acting on this motive unfairly, intentionally, and arbitrarily failed to pursue arbitration.

There is evidence in the record from which one could conclude Mr. Kunzman was considered to be a troublesome fellow. But mere dislike, or motive, is not necessarily evidence of bad faith. For that conclusion claimant relies on actions taken by Mr. Wheeler concerning Mr. Kunzman's lawyer's participation in proceedings. The record, however, shows that Mr. Kunzman did, in fact, confer with his counsel during the significant proceedings below.

The results of negligence, even ineptitude, and an evil intent or bad faith can be the same. And while this Court might conclude the record supports the latter conclusion and agree with Mr. Kunzman, it cannot deny that substantial evidence in the record can also support the PERB findings.

## II.

Mr. Kunzman argues that Mr. Barrick should have been disqualified because of a perceived conflict of interest, yet participated in the decision and or if he did not participate, "the appearance of improper participation" warrants the grant of judicial relief.

Even if Mr. Barrick had a conflict of interest that justified disqualification, there is no record evidence that he participated in PERB's decision-making in this case.

Nor is there any evidence of an "appearance of improper participation by a conflicted board member." The record does show a mistaken statement at oral argument about who would participate in the PERB decision-making process. But that errant prediction did not come to fruition.

Even assuming an appearance of improper participation, Mr. Kunzman would have to demonstrate prejudice to a substantial right arising from agency action which fall within one of the grounds designated in Iowa Code section 17A.19. *Mercy Health Center v. State Health Facilities Council*, supra, 360 N.W.2d at 811. Such is not the case here.

#### CONCLUSION

Mr. Kunzman has the burden of showing that his substantial rights were prejudiced because PERB's action contravened Iowa Code sections 17A.19 (10) (e) or (f). He has not identified particularized factual findings that were not supported by substantial evidence. He has failed to show that any PERB decision-maker was improperly appointed, motivated by an improper purpose or subject to disqualification. The PERB decision is affirmed, with costs taxed to Mr. Kunzman.

  
**ROBERT J. BLINK, JUDGE**  
Fifth Judicial District of Iowa

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